

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

(1) Haddrick Byrd, AF-5828 :
Plaintiff :
SCI-Frackville : Civil Rights Complaint
1111 Altamont Blvd. : 3:20-CV-0164
Frackville, PA. 17931 : (Case Number)

V. :

(1) Superintendent Kathy Brittain :
(2) Deputy Superintendent Lori White :
(3) Deputy Superintendent J. Meintel :
(4) Major Nathan Wynder :
(5) Security Captain Robert Reese :
(6) Correctional Officer Cory Warford :

Defendants

FILED
SCRANTON

JAN 31 2020

PER RF
DEPUTY CLERK

TO BE FILED UNDER: ✓ 42 U.S.C. § 1983 - STATE OFFICIALS

1. Previous Lawsuits

See Byrd V. Shannon, 715 F.3d 117, 124(B)(3d cir. 2013).

2. Pending Lawsuit See Byrd V. Brittain, C.A. No. 1:19-CV-0059

II. EXHAUSTION OF ADMINISTRATIVE REMEDIES

In order to proceed in federal court, you must fully exhaust any available administrative remedies as to each ground on which you request action.

- A. Is there a prisoner grievance procedure available at your present institution? ☒ Yes ☐ No
- B. Have you fully exhausted your available administrative remedies regarding each of your present claims? ☒ Yes ☐ No
- C. If your answer to "B" is Yes:
1. What steps did you take? I filed an inmate official Grievance, Second Level Appeal, and Appeal to final review.
 2. What was the result? All the Appeals were Denied.
- D. If your answer to "B" is No, explain why not: N/A

III. DEFENDANTS

- (1) Name of first defendant: See Next Page
- Employed as _____ at _____
- Mailing address: _____
- (2) Name of second defendant: See Next Page
- Employed as _____ at _____
- Mailing address: _____
- (3) Name of third defendant: See Next Page
- Employed as _____ at _____
- Mailing address: _____

(List any additional defendants, their employment, and addresses on extra sheets if necessary)

IV. STATEMENT OF CLAIM

(State here as briefly as possible the facts of your case. Describe how each defendant is involved, including dates and places. Do not give any legal arguments or cite any cases or statutes. Attach no more than three extra sheets if necessary.)

1. _____
- See Pages 4-7 herein.
- _____
- _____

III. DEFENDANTS:

- (1) Superintendent Kathy Brittain
Facility Manager
1111 Altamont Blvd.
Frackville, PA. 17931
- (2) Deputy Superintendent Lori White
For facility Operations
1111 Altamont Blvd.
Frackville, PA. 17931
- (3) Deputy Superintendent James Meintel
For Facility Services
1111 Altamont Blvd.
Frackville, PA. 17931
- (4) Major Nathan Wynder
Supervisor of the guards
1111 Altamont Blvd.
Frackville, PA. 17931
- (5) Security Captain Robert Reese
Overseer of Security Operations
1111 Altamont Blvd.
Frackville, PA. 17931
- (6) Correctional Officer Cory Warford
1111 Altamont Blvd.
Frackville, PA. 17931

STATEMENT OF COMPLAINT

1. The Department of Corrections has a long standing policy prohibiting "Loud talking, whistling, singing or any other boisterous behavior on the housing unit."
2. The Plaintiff was repeatedly complaining to the staff here at the institution how some correctional officers (CO's) were constantly violating the prohibited rule by whistling on the housing unit to show their resentment towards me knowing the whistling is offensive to my religious beliefs.
3. On January 31, 2018, I sent a request slip to Captain Reese and Superintendent Briitain complaining how CO Pottage was now violating the housing unit rule trying to provoke me and set me up so that he could file a misconduct report against me and have me placed in the restrictive housing unit.
4. On August 29, 2018, the Department of Corrections imposed a statewide lock-down within their correctional institutions.
5. On September 5, 2018, while I was locked in my cell because of the imposed lock-down of the institution CO Warford and CO Pottage along with about three (3) other CO's came on B-wing of A-block to pass-out food-trays around 4:10 P:M.
6. The food-trays ran out and so the CO's told CO Warford to go and get five (5) more food-trays.
7. After taking about five to ten minutes when CO Warford only had to walk a short distance to the front of the wing to get the food-trays.
8. When CO Warford came back with the five (5) food-trays he gave two (2) food-trays to the inmates on the fourth tier across from my cell.
9. CO Warford then came around to the third tier and passed by my cell (42-cell), and went to the cell next door to my cell (41-cell), and passed out two (2) food-trays to the inmates in that cell.
10. CO Warford then came back to my cell (42-cell), and gave me the food-tray that he had placed on the bottom.
11. After having ate my food on the tray I started feeling an intense burning sensation inside of my stomach and upper-chest that was very painful.
12. So when Lt. Allen passed by my cell on September 6, 2018, the next morning I told him that CO Warford had poisoned my food-tray through the

unlawful use of some kind of chemical substance.

13. So Lt. Allen told me that he would inform Captain Purnell about what I said had happened.

14. On September 8, 2018, a nurse came around taking a sick-call list because the institution was still under a lock-down.

15. So I stopped the nurse and told her that I needed to sign-up for sick-call because CO Warford had poisoned my food-tray through the unlawful use of some kind of chemical substance.

16. The nurse told me that I would be seen by a doctor the next day on September 9, 2018.

17. The next day September 9, 2018, another nurse name cress came around and I told him too that CO Warford had poisoned my food-tray through the unlawful use of some kind of chemical substance and nurse cress told me to put in a sick-call slip.

18. Therefore, I sent in a sick-call slip on September 10, 2018, because the institution was no longer under the lock-down and I still wasn't called to see a doctor.

19. So I believed that the staff was trying to cover-up how CO Warford had poisoned my food-tray and so I feared to follow-up on being seen by a doctor after what CO Warford did to me.

20. So for ten (10) days I was experiencing an intense burning in my stomach and upper-chest while trying to flush-out the chemical substance in my system by drinking a lot of cold water.

21. The intense pain from the burning sensation in my stomach and upper-chest was also causing mucus to constantly come out of my nose during those ten (10) days of suffering.

22. The intense pain from the burning sensation in my stomach and upper-chest also made it difficult to sleep at night during those ten (10) days of trying to flush the chemical substance out of my system.

23. So when the prison administrators never responded to my request slip that I sent to them on September 7, 2018, I filed an official inmate grievance under number 760230 on September 21, 2018.

24. Because force is not authorized as a means of punishment or revenge under DC-ADM 201, III. Policy (A)(1-7)(C) and (D).

25. So every use of force incident shall be reviewed by the facility manager for: (1) Policy violations; (2) Appropriateness of staff/inmate

interaction; (3) Appropriateness of staff actions; (4) Training needs as they relate to the decision making of the staff involved; (5) Appropriateness of the level of force used; (6) Any potentially problematic issues; and (7) Recommendation(s) of follow-up actions under DC-ADM 201, section 2.

26. The facility manager may request the office of the secretary to order an investigation of the use of force incident; (2) The office of the secretary shall review the incident for compliance with policy and procedure; and (3) The office of the secretary shall provide direction and/or order an investigation, as needed, based upon the review under DC-ADM 201, section 2(B).

27. Use of force can consist of a show of force (non-aggressive) or the physical contact with an offender in a confrontational situation to control behavior and enforce order. Use of force includes use of restraints (other than for routine transportation and movement), chemical agents, and weapons.

28. At the time of this incident when CO Warford poisoned my food-tray through the unlawful use of some kind of chemical substance the Department of Correction had two (2) policies in place governing the reporting of abuse to inmates DC-ADM 001 and DC-ADM 804.

29. Under DC-ADM 001, an inmate can raise a dispute in one of three ways: (1) "Report it verbally or in writing to any staff member"; (2) "File a grievance in accordance with [the grievance policy]"; or (3) "Report it in writing to the Department's office of professional responsibility (OPR), now the office of special investigation and intelligence (OSII).

30 Once an inmate reports abuse, all subsequent procedures are to be conducted at the initiative of the prison administrators i.e., Superintendent Brittain, Deputy Superintendent's White and Meintel, Major Nathan Wynder and Captain Reese (hereinafter, "the prison administrators)

31. Once a complaint of abuse is received, a prison staff member "shall complete" form DC-121 (report of extraordinary occurrence-Part 3. employee report of incident).

32. Then form DC-121 must be distributed to a supervisor and the facility's security office.

33. once form DC-121 is received by the security office, the incident "shall be investigated and an investigative report shall be compiled" for

submission to OSII.

34. OSII is tasked with reviewing the security office's findings for integrity and thoroughness, and remanding the matter to the facility manager if further investigation is required.

35. If the matter is remanded, the facility manager has 30 days to conduct a follow-up investigation, address OSII's concerns, and resubmit the report.

36. Once OSII accepts the matter, it has 30 working days to complete its own review and respond to the inmate in writing.

37. However, the prison administrators never followed the required procedures in order to cover-up how their colleague has poisoned Plaintiff's food-tray through the unlawful use of a chemical substance.

38. Because there are three (3) high-tech video cameras on the housing unit wing where I am housed on B-wing of A-block to monitor the activity on the wing.

39. So I informed Captain Reese that the video cameras had to pick-up CO Warford putting some kind of chemical substance in my food-tray or taking it out of view of the cameras to put the chemical substance in my food-tray in order to avoid detection.

40. However, the unit manager Ms. Pawling said when she spoke with Captain Reese about CO Warford being accused of poisoning Plaintiff's food-tray with some kind of chemical substance. Captain Reese said that he could not specifically identify CO Warford on the video footage.

41. The unit manager Ms. Pawling also said that she spoke with CO Warford on October 10, 2018, and he indicated that he could not recall whether he was on the block on the particular date and time in question.

42. The high-tech video cameras did however pick-up CO Chandler collecting a commissary slip off-of my cell-door at (42-cell), on B-wing of A-block on November 27, 2017.

43. The Plaintiff's grievance was denied by Lt. Chomisac on October 10, 2018, and Plaintiff's second level appeal to Superintendent Brittain was denied on October 17, 2018, and Plaintiff's final Appeal to Central Office was denied by Keri Moore on November 2, 2018 on behalf of Dorina Varner.

2.

See pages 4-7.

3.

See pages 4-7.

V. RELIEF

(State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.)

1. To hold CO Cory Warford liable for subjecting the Plaintiff to cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution based on the statement of Claims in this complaint.
2. To hold the prison administrators liable because they acquiesced and were deliberately indifferent to the Eighth Amendment Constitutional Violation of Plaintiff's right to be free from cruel and unusual punishment. Because the prison
3. administrators ignored and failed to follow and enforce the policies of the Department of Corrections with the knowledge that CO Warford stood accused of poisoning the Plaintiff's

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 28th day of JANUARY, 2020.

Hadrick Byrd
(Signature of Plaintiff)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

HADDRICK BYRD,

Plaintiff,

v.

SUPERINTENDENT BRITTAIN,
et al.,

Defendants.

: Civil No. 1:19-CV-59
:
:
:
:
:
:
:
:
:
:
: Judge Sylvia H. Rambo

ORDER

For the reasons outlined in the accompanying memorandum, the court shall **GRANT** the motion to dismiss in part, dismissing all of Plaintiff's claims other than his First Amendment freedom of expression claim against Defendants C/O Chandler, Lieutenant Comisac, Superintendent Brittain, and Chief Grievance Officer Dorina Varner. Plaintiff will also be permitted to pursue both injunctive relief and damages against those defendants. Plaintiff's retaliation claim is **DISMISSED WITH LEAVE TO REPLEAD**, if he so chooses, **WITHIN TWENTY-ONE DAYS** of entry of this order. Plaintiff's Eighth Amendment claim, and his claims against all other defendants, are **DISMISSED WITH LEAVE TO FILE AS PART OF A SEPARATE LAWSUIT**.

/s/ Sylvia H. Rambo
Judge Sylvia H. Rambo
United States District Judge

Date: January 15, 2020

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Haddrick Byrd, AF-5828
SCI-Frackville

(b) County of Residence of First Listed Plaintiff Schuylkill
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

1111 Altamont Blvd.
Frackville, PA. 17931

DEFENDANTS

Superintendent Brittain, et al.,

County of Residence of First Listed Defendant Schuylkill
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Department of Corrections
1920 Technology Parkway
Mechanicsburg, PA. 17050

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input checked="" type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. § 1983

Brief description of cause: Civil Rights Complaint

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMANDS \$100,000

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

N/A

DOCKET NUMBER

N/A

DATE

January 28, 2020

SIGNATURE OF ATTORNEY OF RECORD

Haddrick Byrd

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Haddrick Byrd, AF-5828
SCI-Frackville
1111 Altamont Blvd.
Frackville, PA. 17931

United States District Court
Office of the Clerk
235 N. Washington Avenue
P.O. Box 1148
Scranton, PA. 18501

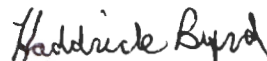
January 28, 2020

RE: Civil Rights Complaint Filing

Greetings Clerk of Court:

Enclosed please find six (6) copies of a civil rights complaint, one for each of the named defendants, Plaintiff's "application to proceed in forma pauperis", and the "authorization form", along with two (2) "Notice of a lawsuit and request to waive service of a summons", and Two (2) "Waiver of the service of summons" for each defendant as well. Thank you for your time, attention and assistance in the filing of these documents with the court.

Sincerely,

A handwritten signature in black ink that reads "Haddrick Byrd". The signature is written in a cursive style with a large, stylized 'H' and a long, sweeping tail on the 'y'.

Haddrick Byrd

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EP14F Oct 2018
OD: 12 1/2 x 9 1/2

FROM: HADDRIK BYRD, AF-58
SCI-Frackville
1111 Altoona Blvd.
Frackville, PA, 17931

RECEIVED
SCRANTON

JAN 31 2020

PER. RP
DEPUTY CLERK

TO:

United States District Court House
OFFICE OF THE CLERK
235 N. Washington Avenue
P.O. Box 1148
Scranton, PA. 18501

* Domestic only. * For Domestic shipments, the maximum weight is 70 lbs. For international shipments, the maximum weight is 4 lbs.